WITNESSES — COMPELLING TESTIMONY — REFUSAL OF A WITNESS TO TESTIFY ON THE GROUND THAT A STATUTE IS UNCONSTITUTIONAL. — A federal grand jury was investigating alleged violations of certain federal statutes. When witnesses refused to testify before it on the ground that the statutes were unconstitutional, presentment was made to the District Court, which, after a hearing on the merits, ordered the witnesses to answer the grand jury's questions. On refusal, witnesses were adjudged guilty of contempt of court and remanded. They then sued out writs of *habeas corpus*. *Held*, the writs were properly dismissed. *Blair* v. *United States*, U. S. Sup. Ct. No. 763, October Term, 1918.

Witnesses who refuse to give material testimony before judicial bodies are guilty of contempt. *In re Grunow*, 84 N. J. L. 235, 85 Atl. 1011. Since, however, it is doubtful whether the administration of justice would thereby be expedited, witnesses need not give testimony tending to degrade them unless it is material to the issue. *Walters* v. *Seattle, R. & So. R. R.*, 48 Wash. 233, 93 Pac. 419. Nor need a witness disclose trade secrets unless justice to the litigants renders disclosure necessary. *Herreshoff* v. *Knietsch*, 127 Fed. 492. Voters who are witnesses are not allowed to tell how they voted at political elections even if willing to do so, because the state gains more from the concealment of such facts than it would from their disclosure. *Commonwealth* v. *Barry*, 98 Ky. 394, 33 S. W. 400. For the same reason a party was not allowed to maintain an action which required a public officer to disclose military secrets. *Totten* v. *United States*, 92 U. S. 105. The decision in the principal case seems sound, since the witnesses claimed neither an excuse nor a justification. They were not, moreover, as witnesses, proper persons to attack the constitutionality of the statutes, not being the parties whose interests the statutes affected. *Mason* v. *Rollins*, 2 Biss. (U. S. C. C.) 99; *Wilkinson* v. *Board of Children' Guardians of Marion County*, 158 Ind. 1, 62 N. E. 481.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION — DUTY OF COURT TO INSTRUCT WITNESS CONCERNING PRIVILEGE. — In a prosecution for adultery, the court received as substantive evidence certain self-incriminating testimony previously given by the accused as a non-party witness in a divorce proceeding against his paramour. The court, in the divorce proceeding, did not instruct the witness as to his privilege. Neither did the witness assert this right at any time. *Held*, that the testimony was improperly admitted against the accused. *People* v. *Maloy*, 170 N. W. 690 (Mich.).

It has always been deemed proper for the court, in its discretion, to caution a witness that he is not bound to answer questions where his answers would tend to criminate him. *State* v. *Dangelo*, 166 N. W. 587 (Iowa); *Dunn* v. *State*, 99 Ga. 211, 25 S. E. 448; *Emery* v. *State*, 101 Wis. 627, 78 N. W. 145. In some jurisdictions, it has been held to be the duty of the court to instruct the witness as to his right, when he was manifestly uninformed. *Ivy* v. *State*, 84 Miss. 264, 36 So. 265; *Bowen* v. *State*, 47 Texas Cr. R. 137, 82 S. W. 520; *United States* v. *Bell*, 81 Fed. 830, 853. But a majority of the more recent decisions hold that the court is not required to inform the witness. *Hanson* v. *Village of Adrian*, 126 Minn. 298, 148 N. W. 276; *Brown* v. *State*, 108 Miss. 478, 66 So. 975; *Commonwealth* v. *Shaw*, 4 Cush. (Mass.) 594. It would seem that the matter ought to be left to the discretion of the trial court. See 4 WIGMORE, EVIDENCE, § 2269. The mere fact that the court did not give such warning should not render the testimony inadmissible. The testimony was not involuntary merely because it was given under oath. *Burnett* v. *State*, 87 Ga. 622, 13 S. E. 552. See also *People* v. *McMahon*, 15 N. Y. 384, 390; *People* v. *Mitchell*, 94 Cal. 550, 555, 29 Pac. 1106, 1107; *People* v. *Gallagher*, 75 Mich. 512, 525, 42 N. W. 1063, 1067. As a practical matter, witnesses generally know their privilege. There seems to be no good reason for treating this privilege

differently from other privileges of a witness, which must be asserted to be claimed. The technical rule adopted by the Michigan court, excluding this evidence unless the witness was instructed as to his privilege by the court, seems undesirable.

WITNESSES — PRIVILEGED COMMUNICATIONS — ATTORNEY AND CLIENT — WHERE THEY ARE CO-TRUSTEES. — The plaintiff filed a bill against the trustees named in a will, claiming to be the *cestui que trust* of a secret trust, and praying discovery of certain documents. The defendants refused to produce them on the ground that they were confidential communications between one of the trustees as solicitor and his co-trustees as clients. The documents related to trust matters but were not made in contemplation of the present action. *Held*, that they were privileged. *In re Whitworth*, [1919] 1 Ch. 320.

A trustee cannot, as against his *cestui*, claim privilege for communications to an attorney in regard to trust matters, unless they are written in respect to the present litigation. *Devaynes* v. *Robinson*, 20 Beav. 42; *Talbot* v. *Marshfield*, 2 Dr. & Sm. 549. This is so because the *cestui* has an equitable right in the documents. A mere claim to be a *cestui*, however, is not sufficient to defeat the privilege. *Wynne* v. *Humbertson*, 27 Beav. 421. The prime requisite of this privilege in any case is that the communication be incidental to the relation of attorney and client. *Turner's Appeal*, 72 Conn. 305, 44 Atl. 310. *Turner* v. *Turner*, 123 Ga. 5, 50 S. E. 969. That there was also the relation of co-trustees between the same persons should not preclude the existence of this requisite. In England a solicitor-trustee cannot charge the estate compensation for professional services, unless they were rendered in a judicial proceeding. *Bainbrigge* v. *Blair*, 8 Beav. 588; *Lincoln* v. *Windsor*, 9 Hare, 158. Hence in the principal case, since compensation was charged, the co-trustees must have consulted the solicitor-trustee as a solicitor, not as a trustee. Thus the general principles governing this privilege were properly applied.

WITNESSES — PRIVILEGED COMMUNICATIONS — CHILD DELINQUENT AND JUVENILE COURT JUDGE. — A twelve-year-old boy confessed in strict confidence his part in the murder of his father to the juvenile court judge of his district. Thereupon delinquency proceedings were instituted against him. At the trial of the boy's mother for the murder he testified in her favor. To impeach this testimony the judge was asked to divulge the boy's confession. Though notified that the boy had consented to his testifying he refused; was ordered by the court to do so; again refused; and was adjudged in contempt of court, and fined. *Held*, that the judgment be affirmed. *Lindsey* v. *People*, 181 Pac. (Colo.) 531 (1919).

For a discussion of this case, see NOTES, p. 88.

BOOK REVIEWS

THE BARONIAL OPPOSITION TO EDWARD II. A Study in Administrative History. By James Conway Davies, Emmanuel College, Cambridge. Cambridge: The University Press. 1918. pp. x, 644.

"What the study of English mediæval history wants, if it is to be kept up as a living thing," declares Professor Tout, "is a more technical and detailed cataloguing and systematising of the dry facts. It is only when the spade-work of history has been done that we may hope to come to any authoritative generalisations." No part of English history has suffered more for the lack of this indispensable "spade-work" than the fourteenth century, and no one has made a more promising beginning of such work than Professor Tout himself in his "Place of Edward II in English History."